

REMARKS

In this preliminary Amendment, Applicant has amended relevant paragraphs of the specification to provide the current address of the NCIMB, and provided the claims listing in proper format. It is respectfully submitted that no new matter has been introduced by the amendment.

STATEMENT OF BIOLOGICAL CULTURE DEPOSIT

Applicant respectfully submits that (1) a deposit of *Bifidobacterium longum infantis* strain HCC 35624 was made at the National Collections of Industrial and Marine Bacteria Limited (NCIMB) at Ferguson Building, Craibstone Estate, Bucksburn, Aberdeen AB21 9YA, UK on January 13, 1999 and accorded the accession number NCIMB 41003; and (2) a deposit of *Lactobacillus salivarius* strain HCC 118 was made at the National Collections of Industrial and Marine Bacteria Limited (NCIMB) at Ferguson Building, Craibstone Estate, Bucksburn, Aberdeen AB21 9YA, UK on November 27, 1996 and accorded the accession number NCIMB 40829. Enclosed please find the copies of the receipts and viability reports regarding the above-indicated deposits for Examiner's reference.

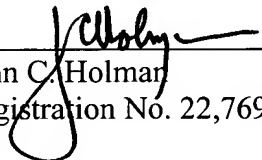
The undersigned attorney, on behalf of the Applicant of the present invention, hereby state that (1) the deposit of *Bifidobacterium longum infantis* strain HCC 35624 with the accession number NCIMB 41003 and *Lactobacillus salivarius* strain HCC 118 with the accession number NCIMB 40829 at the National Collections of Industrial and Marine Bacteria Limited (NCIMB) has been made under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure; and (2) all restrictions imposed by the depositor on all restrictions to the availability to the public of the culture so deposited will be irrevocably removed upon the granting of the patent.

All claims are now present for examination and prompt action toward that end is respectfully solicited.

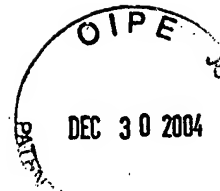
Respectfully submitted,

JACOBSON HOLMAN PLLC

Date: December 30, 2004
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By  _____
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Registration No. 22,769

BUDAPEST TREATY ON THE INTERNATIONAL
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS
FOR THE PURPOSES OF PATENT PROCEDURE



National Food Biotechnology Centre,
University College Cork,
Cork,
Ireland.

INTERNATIONAL FORM

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT
Issued pursuant to Rule 7.1 by the
INTERNATIONAL DEPOSITARY AUTHORITY
identified at the bottom of this page

NAME AND ADDRESS
OF DEPOSITOR

I. IDENTIFICATION OF THE MICROORGANISM

Identification reference given by the
DEPOSITOR:

Bifidobacterium longum infantis
(NFBG 35624)

Accession number given by the
INTERNATIONAL DEPOSITARY AUTHORITY:

NCIMB 41003

II. SCIENTIFIC DESCRIPTION AND/OR PROPOSED TAXONOMIC DESIGNATION

The microorganism identified under I above was accompanied by:



a scientific description



a proposed taxonomic designation

(Mark with a cross where applicable)

III. RECEIPT AND ACCEPTANCE

This International Depositary Authority accepts the microorganism identified under I above, which was received by it on
13 January 1999 (date of the original deposit)¹

IV. RECEIPT OF REQUEST FOR CONVERSION

The microorganism identified under I above was received by this International Depositary Authority on
(date of the original deposit) and a request to convert the original deposit to a deposit under the Budapest Treaty was received by it
on (date of receipt of request for conversion)

V. INTERNATIONAL DEPOSITARY AUTHORITY

Name: NCIMB Ltd.,

Address: 23 St Machar Drive,
Aberdeen,
AB24 3RY,
Scotland.

Signature(s) of person(s) having the power to represent the
International Depositary Authority or of authorised
official(s):

Ronald S. Pinn

Date: 15 January 1999

¹ Where Rule 6/4(d) applies, such date is the date on which the status of International Depositary Authority was acquired.

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**BUDAPEST TREATY ON THE INTERNATIONAL
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS
FOR THE PURPOSES OF PATENT PROCEDURE**

National Food Biotechnology Centre,
University College Cork,
Cork,
Ireland.

INTERNATIONAL FORM

VIABILITY STATEMENT

Issued pursuant to Rule 10.2 by the
INTERNATIONAL DEPOSITARY AUTHORITY
identified on the following page

NAME AND ADDRESS OF THE PARTY
TO WHOM THE VIABILITY STATEMENT
IS ISSUED

I. DEPOSITOR	II. IDENTIFICATION OF THE MICROORGANISM
Name: AS ABOVE	Accession number given by the INTERNATIONAL DEPOSITARY AUTHORITY:
Address:	NCIMB 41003
	Date of the deposit or of the transfer ¹ :
	13 January 1999
III. VIABILITY STATEMENT	
The viability of the microorganism identified under II above was tested on 13 January 1999. 2. On that date, the said microorganism was:	
3	
<input checked="" type="checkbox"/> 3	viable
<input type="checkbox"/> 3	no longer viable

- 1 Indicate the date of the original deposit or, where a new deposit or a transfer has been made, the most recent relevant date (date of the new deposit or date of the transfer).
- 2 In the cases referred to in Rule 10.2(a)(ii) and (iii), refer to the most recent viability test.
- 3 Mark with a cross the applicable box.

IV. CONDITIONS UNDER WHICH THE VIABILITY TEST HAS BEEN PERFORMED⁴

V. INTERNATIONAL DEPOSITARY AUTHORITY

Name: NCIMB Ltd.,

Address: 23 St Machar Drive,
Aberdeen,
A24 3RY,
Scotland.

Signature(s) of person(s) having the power
to represent the International Depositary
Authority or of authorised official(s):

Ronald S. Pinn
Date: 15 January 1999

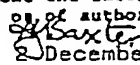
⁴ Fill in if the information has been requested and if the results of the test were negative.

BUDAPEST TREATY ON THE INTERNATIONAL
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS
FOR THE PURPOSES OF PATENT PROCEDURE

Professor J.K. Collins,
Department of Microbiology,
University College Cork,
Cork,
Ireland.

INTERNATIONAL FORM

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT
issued pursuant to Rule 7.1 by the
INTERNATIONAL DEPOSITARY AUTHORITY
identified at the bottom of this page

I. IDENTIFICATION OF THE MICROORGANISM	
Identification reference given by the DEPOSITOR: Lactobacillus salivarius subsp salivarius (UCC 118)	Accession number given by the INTERNATIONAL DEPOSITARY AUTHORITY: NCIMB 40829
II. SCIENTIFIC DESCRIPTION AND/OR PROPOSED TAXONOMIC DESIGNATION	
The microorganism identified under I above was accompanied by:	
<input type="checkbox"/> a scientific description <input checked="" type="checkbox"/> a proposed taxonomic designation (Mark with a cross where applicable)	
III. RECEIPT AND ACCEPTANCE	
This International Depositary Authority accepts the microorganism identified under I above, which was received by it on 27 November 1995 (date of the original deposit) ¹	
IV. RECEIPT OF REQUEST FOR CONVERSION	
The microorganism identified under I above was received by this International Depositary Authority on (date of the original deposit) and a request to convert the original deposit to a deposit under the Budapest Treaty was received by it on (date of receipt of request for conversion)	
V. INTERNATIONAL DEPOSITARY AUTHORITY	
Name: NCIMB Ltd 23 St Machar Drive Aberdeen AB9 8DD Address: UK AB9 8DD	Signature(s) of person(s) having the power to represent the International Depositary Authority or of authorized official(s):  Date: 2 December 1995

¹ Where Rule 6.4(d) applies, such date is the date on which the status of international depositary authority was acquired.

BUDAPEST TREATY ON THE INTERNATIONAL
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS
FOR THE PURPOSES OF PATENT PROCEDURE

INTERNATIONAL FORM

Professor J.K. Collins,
Department of Microbiology,
University College Cork,
Cork,
Ireland.

VIABILITY STATEMENT
issued pursuant to Rule 10.2 by the
INTERNATIONAL DEPOSITARY AUTHORITY
identified on the following page

NAME AND ADDRESS OF THE PARTY
TO WHOM THE VIABILITY STATEMENT
IS ISSUED

I. DEPOSITOR	II. IDENTIFICATION OF THE MICROORGANISM
Name: Address: AS ABOVE	Accession number given by the INTERNATIONAL DEPOSITARY AUTHORITY: NCIMB 40829 Date of the deposit or of the transfer: 27 November 1996
III. VIABILITY STATEMENT	
The viability of the microorganism identified under II above was tested on 27 November 1996 1. On that date, the said microorganism was <input checked="checked" type="checkbox"/> viable <input type="checkbox"/> no longer viable	

1. Indicate the date of the original deposit or, where a new deposit or a transfer has been made, the most recent relevant date (date of the new deposit or date of the transfer).
2. In the cases referred to in Rule 10.2(a) (ii) and (iii), refer to the most recent viability test.
3. Mark with a cross the applicable box.

IV. CONDITIONS UNDER WHICH THE VIABILITY TEST HAS BEEN PERFORMED ⁴	
V. INTERNATIONAL DEPOSITARY AUTHORITY	
Name: Address:	NCIMB Ltd 23 St Machar Drive Aberdeen Scotland UK AB9 8HY
Signature(s) of person(s) having the power to represent the International Depositary Authority or of authorized official(s): <i>J. Baxter</i> Date: 2 December 1996	

⁴ Fill in if the information has been requested and if the results of the test were negative.

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